LIBRARY
SUPREME COURT, U.S.

Office Supreme Court, U.S.
FILED
JUL 26 1956
JOHN T. FEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 204

WILLIAM BENZ, et al, Individually and as Representatives of All of the Members of the SAILORS' UNION OF THE PACIFIC,

M. D. MacRAE, et al, Individually and as Representatives of All of the Members of Local 90 of the NATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL,

JEFF MORRISON, et al, Individually and as Representatives of All of the Members of ATLANTIC AND GULF DISTRICT, SEAFARERS' INTERNATIONAL UNION, AFL,

Petitioners,

vs.

COMPANIA NAVIERA HIDALGO, S. A., a corporation,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF RESPONDENT IN OPPOSITION

LOFTON L. TATUM,
JOHN D. MOSSER,
1310 Yeon Building,
Portland 4, Oregon,
GUNTHER F. KRAUSE,
Portland Trust Building,
Portland 4, Oregon,
Counsel for Respondent.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 7-38

In the Supreme Court
of the United States

OCTOBER TERM, 1956

No. .....

WILLIAM BENZ, et al, Individually and as Representatives of All of the Members of the SAILORS' UNION OF THE PACIFIC,

M. D. MacRAE, et al, Individually and as Representatives of All of the Members of Local 90 of the NATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL,

JEFF MORRISON, et al, Individually and as Representatives of All of the Members of ATLANTIC AND GULF DISTRICT, SEAFARERS' INTERNATIONAL UNION, AFL,

Petitioners,

vs.

COMPANIA NAVIERA HIDALGO, S. A., a corporation,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF RESPONDENT IN OPPOSITION

OPINIONS BELOW

Since the filing of the petition the opinion of the Court of Appeals for the Ninth Circuit has been reported at 233 F. 2d 62, with its opinion on petition for rehearing following.

QUESTIONS PRESENTED

Does anything in the Labor-Management Relations Act, 1947, 61 Stat. 136 et seq., 29 U.S.C.A. Section 141 et seq., deprive a court of otherwise competent jurisdiction of jurisdiction to award judgment against the members of an American union for damages caused by them in peacefully picketing a tramp vessel at a port of the United States, where they were picketing:

1. As the uncertified representatives of former members of the crew of such vessel for the purpose of forcing the vessel's owner to rehire such former crew members at higher wage rates and on conditions other than those contained in the articles entered into by such former crew members and which would still be governing them had they not been properly discharged for refusing to obey the lawful commands of the vessel's master and engaging in a sitdown strike for the same purpose?

2. As the uncertified representatives of alien nonresidents of the United States for the purpose of forcing an alien corporate employer to employ such alien nonresidents aboard the vessel, which was registered under a foreign flag?

3. For a purpose unlawful under the laws of the state in which the picketing occurred?

STATEMENT OF THE CASE

The facts are uncontested. The findings of the district court are in the record, in the Benz case at pp. 237-244, MacRae case at pp. 323-332 and Morrison case at

pp. 369-378. These and the procedural history of the case are well and briefly summarized in the opinion of the court of appeals, 233 F. 2d 62, at 63-4, Appendix A to Petition, at 21-23.

We shall not completely restate the case here; but wish to call the Court's attention to those findings, not mentioned in petitioners' statement of the case, which bring this case under previous decisions of this Court and which would require affirmance of the judgments below, without reaching the questions on which petitioners seek review. Identical in each case, they are:

"V

"Between March, 1952, and August, 1952, the crew members of the steamship Riviera, principally German and British and all citizens of countries other than the United States, signed a British form of articles whereby said crew members agreed to work on said ship on a voyage from Bremen, Germany, for a period of two years and further agreed that British Maritime Board conditions were to apply to wages and hours of employment, and agreed that shore leave and cash advances to be at the discretion of the master of the ship. By the terms of said Articles of Agreement, said crew members and plaintiff herein agreed upon the wages to be paid to the crew members and the provisions as agreed upon were set forth in said agreement. The wage rates specified therein for each member were equal to or higher than those customarily then paid for similar employment in the British Merchant Marine. Said crew members further agreed by the terms of said articles to be obedient to the lawful commands of said master in everything relating to said ship and the stores and cargo thereof, whether on board, in boats, or on shore." (Record 239, 325, 371)

"VIII

"Plaintiff complied with all of its obligations under the terms of the ship's articles and the contract governing the relations between the plaintiff and members of the crew of said vessel." (Record 240, 327, 373)

"IX

"On or about the 9th day of September, 1952, a number of members of the crew of the Riviera refused to obey the lawful orders of the master of said vessel and went on strike for the sole purpose of cutting down the term of their service from two years, the length of service agreed upon in their Articles, and to obtain a higher wage rate and other conditions more favorable to them than those agreed upon in said Articles." (Record 240, 327, 373)

"X

"From the date of said strike up to and including September 26, 1952, the striking crewmen of said vessel remained aboard the vessel, continued to occupy their quarters, refused to continue to work aboard said vessel and refused to leave the vessel. On or about September 18, 1952, plaintiff filed in this court a possessory libel, bearing Civil No. 6629. On September 25, 1952, said striking crewmen were ordered by order of this court in said possessory libel to leave said vessel and said crewmen, on September 26, left said vessel." (Record 241, 327, 373)

ARGUMENT

I The Judgments Against Petitioners Are Correct Irrespective of the Answers to the Questions on Which Petitioners Seek Their Review

Petitioners seek review of the decision of the Court of Appeals that the National Labor Relations Act of 1947 does not so far vest jurisdiction in the National Labor Relations Board as to deprive the courts of juris-

diction to award damages in tort to one injured by peaceful picketing for a purpose unlawful under the law of the state where it occurred. But, for two reasons, it is doubtful that this Court would ever reach that question.

First, because the picketing here involved was for an unlawful purpose under general Maritime Law and constituted a Maritime tort, as well as a tort under state law. Under these circumstances there need be no question of the preemption of federal law over state law, but a question of which federal law controls. The courts have consistently held the Maritime Law controls over general labor legislation.

In *Rees vs. U. S.*, 95 F. 2d 784, the Court of Appeals for the Fourth Circuit reviewed the many protections both by legislation and the general maritime law which surround the employment relationship of seamen on the vessel on which they serve. The court pointed out that the safety of lives and property aboard ship depend upon a high discipline which is destroyed by strikes and refusal to obey orders of the master. It pointed to the dependence of the seaman upon his vessel and that neither the shipowner nor the seaman is in a good bargaining position in a foreign land, whose shores may be inhospitable to the crew and unproductive of any substitutes for them. For these reasons the court stated:

> "When articles are signed by a crew for a voyage, all bargaining, individual and collective, is ended for the duration of the voyage. A contract is made, binding both owner and seaman, that is lawful, if the articles comply with the statutes, and should be lived up to scrupulously." (95 F. 2d 784, at 792)

This question has also been passed upon by this Court in *Southern Steamship Company vs. NLRB*, 316 U.S. 31, 86 L. Ed. 1246, 62 S. Ct. 886, and by the Court of Appeals for the Fifth Circuit in *Peninsular & Occidental Steamship Co. vs. NLRB*, 98 F. 2d 411. In each of these cases it was held that seamen who had gone on strike while under articles were not entitled to reinstatement. In each case the NLRB had found the shipowner guilty of an unfair labor practice in discharging the striking crew members and ordered reinstatement of the men in order to effectuate the purposes of the National Labor Relations Act. Nevertheless the courts held that reinstatement under these circumstances, despite the public policy of the Act, would not be enforced to the detriment of maritime discipline.

The discharged members of the crew had no rights under the National Labor Management Relations Act to bargain collectively concerning wages, hours and working conditions where such was forbidden by their articles and Maritime Law. The appointment of petitioners as their representatives was nothing more than an attempt to gain through agents rights which they, as principals, did not have and could not confer on the agents.

A second reason why the National Labor Management Relations Act is totally inapplicable to this case lies in the foreign nature of the dispute. It involved basically a contract of employment between an alien employer and alien employees to be wholly performed aboard a foreign vessel. This Court has long held that words in acts of Congress having universal scope, "will be taken,

as a matter of course, to mean only everyone subject to such legislation, not all the legislator subsequently may be able to catch." *American Banana Co. v. United Fruit Co.*, 213 U.S. 347, 357, 53 L. ed. 826, 832 (1909) (Sherman Act held inapplicable to acts done in Costa Rica.) It has recently ruled that in the absence of any language to the contrary Congress must be presumed to intend to limit labor legislation to the "territorial jurisdiction" of the United States, *Foley Bros., Inc. v. Filardo*, 336, U.S. 281, 93 L. ed. 680 (1949) (Eight-Hour law inapplicable to bases in Iraq and Iran.) And in the field of Admiralty, the court has even more recently held that the universal language of the Jones Act was not intended to extend to a foreign seaman injured aboard a foreign ship, although jurisdiction of the parties was temporarily present, *Lauritzen v. Larsen*, 345 U.S. 571, 97 L. ed. 1254 (1953).

So here there is nothing but the temporary presence of the vessel at a United States port and the American unions acting, not for themselves, but as *representatives of foreigners*. There is no reason to believe Congress intended our labor legislation to apply. There are many reasons to believe otherwise. Chaos would ensue if articles were valid in one port but not the next, if at every briefly intended call at port the ship must pause while new representatives were chosen for the crew and a new bargain made according to local law. Reprisals against vessels flying the stars and stripes might quickly be expected if this country thus asserts jurisdiction over relations aboard other ships and impedes the flow of foreign commerce.

Recognizing this, the National Labor Relations Board has itself held that it lacked jurisdiction to interfere in the internal economy of a foreign vessel by holding an election to determine a collective bargaining agent for the crew. *Sailors' Union of the Pacific, Case No. 20, R. C. 809, C.C.H. Labor Reports, 1950-51, N.L.R.B. Decisions, Par. 1,081, May 1, 1950.*

II. The Decision Below Is Correct

The decision below is not in conflict with any other of this Court or of any of the other circuits. Neither this Court, nor any of the federal courts have ever specifically held that damages in tort may not be awarded under state law for peacefully conducted picketing which is unlawful in objective.

Except for *United Construction Workers v. Laburnum Construction Corp.*, 347 U.S. 656, 98 L. ed. 1025 (1954), none of the cases cited by petitioners dealt with the question of damages at all. And *Laburnum* clearly held that tort remedy of damages provided by state law available. In so doing, the Court pointed out that Congress intended by the National Labor Management Relations Act to increase, not reduce, the liability of labor for its wrongs, that the legislative history showed that the remedy of damages was meant to be supplemented, not displaced, and that Congress had not provided in the Act any general procedures "for dealing with the consequences of tortious conduct already committed," so as to preempt that field. All of that reasoning is as applicable to a tortious injury involving wrongful ends as to one involving wrongful means.

And in this case it is hard to separate the ends from the means. While the picketing itself was peaceful, its purpose was the support of previously used improper means. The mutinous conduct of the crew and their sitdown strike were acts held criminal by the district court in ordering them to leave the vessel.[1] Thus both ends and means of the discharged crew members were unlawful. Even if there may be some instance where the holding of *Laburnum* would be inapplicable to peaceful picketing for an unlawful purpose, the background of these cases is not such as to invite that distinction.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

LOFTON L. TATUM,
JOHN D. MOSSER,
GUNTHER F. KRAUSE,
Counsel for Respondent.

---

[1] "The conduct of the respondents, if they were on an American vessel would constitute mutiny. *Southern S. S. Co. v. Labor Board*, 316 U.S. 31. In my opinion, even though the "Riviera" is a foreign ship, the activities of the seamen constitute criminal conduct—trespass—at the very least." (Unpublished opinion of the Honorable Gus J. Solomon, District Judge, in the District Court of the United States for Oregon, *Compania Naviera Hidalgo, S.A., v. SS Riviera, her engines, etc., N. Pedersen, et al*, Civil No. 6629, rendered September 25, 1952.)